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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/921,819	08/03/2001	Roland Buelow	14750	8351

7590

11/30/2004

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EXAMINER

WEHBE, ANNE MARIE SABRINA

ART UNIT	PAPER NUMBER
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1632

DATE MAILED: 11/30/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Response to Amendment

The reply filed on 9/3/04 is not fully responsive to the prior Office Action because of the following omission(s) or matter(s): the amendment adds new claims 67-76 which recite subject matter, specifically non-coding sequences, not previously claimed in the invention elected by applicants on 10/30/03. The non-coding sequences comprising SEQ ID NOS: 3-5 and 8-13, now claimed in claims 72-75, were subject to restriction in the office action mailed on 10/3/03. Page 6 of the 10/3/03 office action stated:

Applicant is required under 35 U.S.C. 121 to elect a single disclosed polynucleotide sequence from the polynucleotide sequences, SEQ ID NOS 3-5, and 8-13, for prosecution on the merits.

This is not an election of species. By statute, "[i]f two or more independent and distinct inventions are claimed in one application, the Commissioner may require the application to be restricted to one of the inventions." 35 U.S.C. 121. Pursuant to this statute, the rules provide that "[i]f two or more independent and distinct inventions are claimed in a single application, the examiner in his action shall require the applicant... to elect that invention to which his claim shall be restricted." 37 CFR 1.142 (a). See also 37 CFR 1.141(a).

Nucleotide sequences encoding different proteins or regulatory elements or portions thereof are structurally distinct chemical compounds and are unrelated to one another. These sequences are thus deemed to normally constitute independent and distinct inventions within the meaning of 35 U.S.C. 121. Absent evidence to the contrary, each such nucleotide sequences are presumed to represent an independent and distinct invention, subject to restriction requirement pursuant to 35 USC 121 and 37 CFR 1.141.

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the

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inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

It is noted that isolated nucleic acid molecules comprising SEQ ID NOS: 3-5, and 8-13 were originally claimed separately, and were identified as Invention I. Now that the applicant has incorporated this subject matter into the transgenic vectors of elected invention III, the claims are subject to the restriction requirement between SEQ ID NOS: 3-5 and 8-13. The applicant's response, however, does not include an election of one of SEQ ID NOS: 3-5, and 8-13. Such an invention is required in order for applicant's response to be complete.

Applicant is advised that in order for the reply to this communication to be complete, it must include an election of the invention of a polynucleotide sequence from SEQ ID NOS: 3-5, and 8-13 even though the requirement be traversed (37 CFR 1.143).

Since the above-mentioned reply appears to be *bona fide*, applicant is given **ONE (1) MONTH or THIRTY (30) DAYS** from the mailing date of this notice, whichever is longer, within which to supply the omission or correction in order to avoid abandonment. EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136(a).

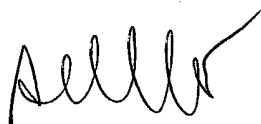
Any inquiry concerning this communication from the examiner should be directed to Anne Marie S. Wehbé, Ph.D., whose telephone number is (571) 272-0737. The examiner can be reached Monday- Friday from 10:30-7:00 EST. If the examiner is not available, the examiner's supervisor, Amy Nelson, can be reached at (571) 272-0804. For all official communications, the

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technology center fax number is (703) 872-9306. For informal, non-official communications only, the examiner's direct fax number is (571) 273-0737.

Dr. A.M.S. Wehbé

ANNE M. WEHBE' PH.D
PRIMARY EXAMINER

A handwritten signature in black ink, appearing to read 'Anne M. Wehbé', with a long, sweeping horizontal line extending to the right.